

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
March 27, 2012

v

TONYA ELIZABETH STAFFELD,

Defendant-Appellee.

No. 303056
Wayne Circuit Court
LC No. 10-013088-FH

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

The prosecutor appeals as of right the circuit court's order dismissing charges of involuntary manslaughter, MCL 750.321, and second-degree child abuse, MCL 750.136b(3). We affirm.

I. BACKGROUND

Defendant was charged with involuntary manslaughter and second-degree child abuse in connection with the drowning death of her five-year-old son. Defendant had been playing with her two children in the backyard of her home, which had a built-in swimming pool. Defendant left the children alone while she went inside to get a bottle for her one-year-old baby. While she was gone, the five-year-old child, who was playing on his scooter, entered the pool and drowned.

The prosecution only presented two witnesses at the preliminary examination: the medical examiner and defendant's husband. The medical examiner testified that defendant's son died from drowning and his manner of death was accidental. Defendant's husband testified that while he was working in the garage, defendant was playing with the children in the backyard. He suddenly heard defendant screaming and as he ran into the backyard, defendant was running towards him. At that point, defendant's husband saw his five-year-old son lying next to the pool. Defendant's husband immediately dialed 911 and performed CPR until emergency services arrived. Defendant's husband also testified that his son was deathly afraid of water, refused to go by the pool, refused to learn how to swim, would not even get into the pool with his parents, nor would the child play by the pool.

The district court determined that whether defendant was grossly negligent because she failed to adequately supervise her child was a question for the jury. Consequently, the district court determined that the prosecution met its burden of probable cause and bound the case over

for trial. In circuit court, defendant filed a motion to quash. The circuit court determined that the district court abused its discretion in binding defendant over on both charges. Specifically, after reviewing the evidence presented at the preliminary examination, the circuit court concluded that there was no evidence to support the theory that defendant was grossly negligent:

And I think it's very important in this case that the father witness at the time of the exam testified, as I've indicated already, that the victim in this case was definitely afraid of water. Would never go near the water, and they couldn't get him to learn how to swim. And all of that is pertinent to the mother's ability to foresee the consequences of her going into the house to get a bottle of water on the date in question.

And the issue isn't whether or not hindsight may cause her now to have made a different decision because she's charged with doing something that must be a reckless act or an act of gross negligence. And just to remind the record, gross negligence means a lot more than carelessness. It means a willful disregard of the results to others that might follow from an act or failure to act. It would require a great deal more foreseeability than what is apparent in this case from the record. And it also requires that the defendant knew of the danger to another. That is, that she knew that the situation would have required her to take ordinary care to avoid injuring her children. Again, that's the luxury of hindsight.

* * *

Or actually if anything, there is evidence in the record of non-foreseeability, to wit, the husband's testimony that the deceased child was intensely afraid of water.

* * *

And what the examining magistrate had to work with, the record that was created at the exam was simply that the mother went in the house to get a bottle for one of the boys playing in the backyard. The other child somehow got into the swimming pool while she was in the house for a few minutes or ten minutes. And under those circumstances she's charged with manslaughter, which is just an insupportable charge. Completely insupportable based on the exam evidence.

And there's - there's nothing in the CPS records even that would, that could have supplemented the exam testimony or evidence in any way that would have helped the People's case. So I am granting the motion as to Count 1, manslaughter, as well as Count 2 which requires at least in this case the showing of a reckless act.

There was no reckless act here. There was a momentary oversight or inadvertence which may not even rise to the level of an act of negligent [sic]. But it was not a reckless act as defined in the jury instruction or the statute.

* * *

Well, as I have said, and this pertains equally to the second charge as it did for the first, her act of going into the house to get the bottle for the baby was not an act of recklessness. At worst in hindsight since it had such calamitous consequences, one could easily suggest other ways that she might have handled it. But there was no foreseeability that the act would have had the calamitous consequences that it did have. So the motion is granted as to both counts.

The prosecution now appeals as of right the circuit court's dismissal of both charges.

II. ANALYSIS

The district court's decision to bind a defendant over for trial is reviewed for an abuse of discretion. *People v Yamat*, 475 Mich 49, 52; 714 NW2d 335 (2006). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006); *People v Carnicom*, 272 Mich App 614, 617; 727 NW2d 399 (2006). A circuit court's decision concerning a district court's bindover ruling is reviewed de novo. *People v Crippen*, 242 Mich App 278, 282; 617 NW2d 760 (2000). Therefore, this Court "gives no deference to the circuit court's decision." *People v Henderson*, 282 Mich App 307, 313; 765 NW2d 619 (2009). Rather, this Court "reviews the bindover decision de novo to determine whether the district court abused its discretion." *Id.*

The purpose of a preliminary examination is to determine whether there is probable cause to believe both that an offense has been committed and it was committed by defendant. MCL 766.13; MCR 6.110(E). Probable cause that defendant committed the crime is established by evidence "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief" of the defendant's guilt. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003) (quotations and citation omitted). The prosecutor must present evidence showing each element of the crime charged or evidence from which the elements can be inferred, although the evidence need not establish guilt beyond a reasonable doubt. *People v McBride*, 204 Mich App 678, 681; 516 NW2d 148 (1994). If the evidence conflicts or otherwise creates a reasonable doubt concerning the defendant's guilt, the defendant should be bound over for resolution of the issue by the trier of fact. *People v Selwa*, 214 Mich App 451, 457; 543 NW2d 321 (1995). This means that where "there is credible evidence both to support and to negate the existence of an element of the crime, a factual question exists that should be left to the jury." *People v Maynor*, 256 Mich App 238, 245; 662 NW2d 468 (2003), quoting *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997).

A. INVOLUNTARY MANSLAUGHTER

Involuntary manslaughter encompasses three different theories that can support a conviction. *People v Datema*, 448 Mich 585, 596; 533 NW2d 272 (1995). "Involuntary manslaughter is defined as the killing of another without malice and unintentionally, but (1) in doing some unlawful act neither amounting to a felony nor naturally tending to cause death or great bodily harm, or (2) in negligently doing some act lawful in itself, or (3) by the negligent omission to perform a legal duty. The theories are not mutually exclusive, and, in fact, multiple theories may be appropriate in certain circumstances." *People v Cummings*, 229 Mich App 151,

154-155; 580 NW2d 480 (1998), rev'd on other grounds 458 Mich 877 (1998) (citations omitted).

“The kind of negligence required for manslaughter is something more than ordinary or simple negligence, however, and is often described as ‘criminal negligence’ or ‘gross negligence[.]’” *People v Herron*, 464 Mich 593, 605; 628 NW2d 528 (2001). Ordinary negligence implies inadvertence, i.e., that the defendant was unaware of the dangerousness of his conduct and did not intend to harm anyone. *Datema*, 448 Mich at 604. Gross negligence implies advertence, i.e., that the defendant *was aware of the dangerousness of his conduct* and consciously chose to create that risk, but did not seek to cause harm. *Id.* It consists of (1) knowledge of a situation requiring the exercise of ordinary care to avoid injuring another person, (2) the ability to avoid that harm by the use of ordinary care, and (3) failing to use such ordinary care when it is apparent that the result is likely to prove disastrous to another. *People v Orr*, 243 Mich 300, 307; 220 NW 777 (1928).

Although there is no case in Michigan involving whether the failure to adequately supervise a child near a pool constitutes gross negligence, two cases involving involuntary manslaughter charges against mothers who failed to attend to their children are instructive regarding the type of situation that rises to the level of gross negligence. In *People v Albers*, 258 Mich App 578, 580; 672 NW2d 336 (2003), the defendant mother was convicted of involuntary manslaughter when her six-year-old child started a fire that killed a 22 month-old child. The defendant’s child started the fire by retrieving a lighter from underneath the couch where the defendant was sleeping, and taking a candle from the kitchen. The child then went into the defendant’s bedroom and lit the candle, which caught the bedroom curtain on fire, and the fire spread throughout the apartment complex. *Id.* The defendant was well aware of her child’s fascination with fire, and his tendency to set objects on fire. Furthermore, the defendant had been repeatedly warned to keep all flammable material and incendiary devices away from her child. *Id.* at 582-583. This Court found that the evidence was overwhelming sufficient to uphold the involuntary manslaughter conviction because the defendant’s refusal to take precautionary steps to prevent her child from having access to flammable objects and incendiary devices, despite her knowledge of his fire-starting proclivities, constituted gross negligence. *Id.* at 583-584.

Likewise, in *Wayne Co Prosecutor v Recorder’s Court Judge*, 117 Mich App 442, 446-447; 324 NW2d 43 (1982), this Court reinstated the charges of involuntary manslaughter against the defendant mother where the defendant locked her children, who were known to play with matches, into a room containing matches for over two hours. During that time, the children, who were alone in the locked bedroom, started the fire that led to their deaths. *Id.* at 444-446. This Court concluded that the defendant was grossly negligent because she had previously seen her children playing with matches, and thus, the tragedy was foreseeable. *Id.* at 446.

Given the evidence presented at the preliminary examination, we conclude, as did the circuit court, that the district court abused its discretion in binding defendant over on the charge of involuntary manslaughter under the theory that she was grossly negligent in failing to adequately supervise her child. The record reveals that it was known by both defendant and her husband that the child was extremely afraid of the water. Indeed, defendant’s son refused to go by the water even when a parent was present. Because defendant had no knowledge of her

child's tendency to go near the pool, and there was no evidence that he had any such tendency, it was not foreseeable – i.e., it was not probable – to defendant that her son would go near the pool when left by himself for a few moments. The facts of this case simply do not rise to the same level as the facts of *Albers* or *Wayne Co Prosecutor*, and on this record it cannot be said that defendant was grossly negligent when she went into the house to get a bottle for her other child and briefly left the five-year-old child unattended. Because there was no evidence to support the element of gross negligence, and no conflicting evidence presented that would have created the need for resolution of the issue by the trier of fact, *Maynor*, 256 Mich App at 245, the district court abused its discretion in binding defendant over on the charge of involuntary manslaughter.

B. SECOND-DEGREE CHILD ABUSE

The prosecution charged defendant with second-degree child abuse, MCL 750.136b(3)(b), which provides:

A person is guilty of child abuse in the second degree if any of the following apply:

* * *

(b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.

MCL 750.136b(3)(b) requires proof that (1) the defendant is the parent of the child, (2) the defendant knowingly or intentionally did an act likely to cause serious physical or mental harm to the child, regardless of whether such harm occurred, and (3) the child was under the age of 18. CJI2d 17.20a. Serious physical harm is a physical injury that seriously impairs the child's health or physical well-being. MCL 750.136b(1)(f).

Based on the evidence presented at the preliminary examination, the district court abused its discretion in binding defendant over on the charge of second-degree child abuse. As previously discussed, given that the record reflects that defendant's son had a strong aversion to water and became terrified at the prospect of going near the pool, even when a parent was present, it cannot be said that defendant's act of going into the house to retrieve a bottle for her other child was likely – i.e., it was not foreseeable – to cause serious physical harm to the child. Because there was no evidence to support the charge of second-degree child abuse, the district court abused its discretion in binding defendant over on this charge.

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray